

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Z.H., by and through KEVIN HUTCHENS and CHRISTIN HUTCHENS, individually, and as parents and next of friends of Z.H., Case No. 1:14-cv-176 Cleveland, Ohio

**Plaintiffs**

vs.

FRIDAY, JANUARY 20, 2017

VOLUME 5

Pages 746 - 987

ABBOTT LABORATORIES INC. and  
ABBVIE INC.,

## Defendants.

- - -

TRANSCRIPT OF **JURY TRIAL** PROCEEDINGS  
BEFORE THE HONORABLE CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE

## Official Court Reporters:

Sarah Nageotte, RDR, CRR, CRC  
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United States District Court  
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Cleveland, Ohio 44113  
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Proceedings recorded by mechanical stenography,  
transcript produced by computer-aided transcription.

1 FRIDAY, JANUARY 20, 2017, 11:07 A.M.

2 (In Open Court - Jury Not Present)

3 | Page

4 THE COURT: Please be seated, ladies and  
5 gentlemen.

6                   Here's the bottom line. In the bench brief  
7                   entitled "Concerning the admissibility of Dr. Cheryl  
8                   Blume's regulatory opinions," defendants raise four  
9                   issues for the Court to revisit.

11:07:52 10 Number one, Depakote's 2002 label should  
11 have warned of the birth defect risk of up to 20 percent.

Two, Depakote's 2002 label should have contained a last resort warning.

14 Three, Depakote's 2002 label was an  
11:08:08 15 anti-warning.

16 And, four, Depakote's 2002 label should  
17 have included the risk of fetal valproate syndrome.

18 All right. In light of Dr.  
19 Foldvary-Schaefer's testimony, Dr. Blume may not opine  
11:08:21 20 that the Depakote label of 2002 should have contained an  
21 up to 20 percent risk of birth defects or any arbitrary  
22 number or range of percentages of risks because there was  
23 no foundation established by plaintiffs in either Dr.  
24 Foldvary-Schaefer's or Dr. Blume's testimony.

11:08:39 25 And because their testimony is linked on

1                   the range of risk, the Court strikes all references in  
2                   Dr. Foldvary-Schaefer's testimony regarding up to 20  
3                   percent risk of birth defects and Dr. Blume may not opine  
4                   that the label should have included any range of  
11:08:56 5                   percentages.

6                   In other words, Blume cannot testify that  
7                   the 2002 Depakote label should have included a range of  
8                   10 to 20 percent because it's not in her report or  
9                   deposition. "Helpful, but not necessary," quotes, is  
11:09:11 10                   inconsistent with a reasonable degree of expert  
11                   certainty.

12                   This does not preclude testimony regarding  
13                   percentages in studies.

14                   Okay. The Court will allow opinion  
11:09:24 15                   testimony that the label should have included a warning  
16                   consistent with the opinions in her report.

17                   Upon consideration of Dr.  
18                   Foldvary-Schaefer's testimony, the Court will not change  
19                   its decision to allow testimony by Dr. Blume regarding  
11:09:38 20                   the anti-warning and last resort warning on the 2002  
21                   Depakote label.

22                   And in light of plaintiffs' representation  
23                   that it will not elicit testimony from Dr. Blume that a  
24                   label should have included a warning on the risk of fetal  
11:09:54 25                   valproate syndrome, defendants' fourth objection is moot.

1                   I'm struggling with an issue, specifically  
2 that the FDA did not permit or allow Abbott to put on the  
3 label anything about cognitive developmental delay, yet  
4 plaintiffs want it as part of damages.

17:41:31 5                   I want to hear from both sides before I  
6 make a decision, especially since the witnesses will be  
7 testifying --

8                   MR. BALSER: Thank you, Your Honor.

9                   THE COURT: -- about that. Okay.

17:41:40 10                  MR. STRAIN: That was the other thing I  
11 wanted to raise, request that.

12                  THE COURT: Of course. Have a good  
13 weekend, everyone.

14                  (Proceedings recessed for the day at 5:41 p.m.)

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19                   **C E R T I F I C A T E**

20                  We certify that the foregoing is a correct  
21 transcript of the record of proceedings in the  
above-entitled matter prepared from the stenotype notes.

22                  */s/ Sarah Nageotte*  
23                  \_\_\_\_\_  
24                  SARAH NAGEOTTE, RDR, CRR, CRC

25                  */s/ Susan Trischan*                            1/20/2017  
26                  \_\_\_\_\_  
27                  SUSAN TRISCHAN, RMR, CRR, FCRR              DATE